

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF HUMAN SERVICES**

In the Matter of the Revocation of the License of
Jennifer Larson
416 W 2nd St – PO Box 294
Winthrop, MN 55396
to provide family child care under Minnesota
Rules, parts 9502.0300 to 9502.0445

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATIONS**

Administrative Law Judge Bruce H. Johnson conducted a hearing in this contested case proceeding beginning at 1:00 p.m. on December 17, 2002, at the Sibley County Courthouse, Courtroom 2, Gaylord, Minnesota. The OAH record closed when the hearing ended on December 17, 2002.

Donald E. Lannoye, Assistant Sibley County Attorney, 307 N. Pleasant Avenue, P. O. Box H, Winthrop, Minnesota 55396-0406, appeared at the hearing as attorney for Sibley County (the County) and the Minnesota Department of Human Services (the Department). Jennifer Larson, 416 West 2nd Street, P.O. Box 294, Winthrop, Minnesota 55396, was not represented by an attorney and appeared at the hearing on her own behalf.

**THESE FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATIONS
ARE PUBLIC, BUT THE HEARING RECORD ON WHICH THEY ARE BASED
CONTAINS INFORMATION THAT IS NOT PUBLIC.**

NOTICES

This Report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Human Services will make the final decision after reviewing the administrative record. The Commissioner may adopt, reject or modify these Recommendations. Under Minnesota law,^[1] the Commissioner may not make her final decision until after the parties have had access to this report for at least ten days. During that time, the Commissioner must give each party adversely affected by this report an opportunity to file exceptions and present argument to her. Parties should contact the office of Kevin Goodno, Commissioner of Human Services, 444 Lafayette Road, St. Paul, Minnesota 55155, to find out how to file exceptions or present argument.

STATEMENT OF ISSUES

(1) Whether Mr. Larson should be disqualified from having direct contact with persons served by programs licensed by the Department; and

(2) Whether Mrs. Larson's license to provide child foster care should be revoked because of Mr. Larson's disqualification.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. During all times important to this proceeding, Jennifer Larson has lived at 416 West 2nd Street, P.O. Box 294, Winthrop, Minnesota 55396. Her husband, Kevin Scott Larson, has lived there with her, as well as a minor child from a previous marriage. That minor child has been receiving case management and mental health services from the Sibley County Human Services Department.^[2]

2. For about three to four years prior to June 2002, Mrs. Larson had been licensed to provide family child care at her home.^[3]

3. On December 10, 2000, the Winthrop Police Department responded to a report of a domestic disturbance at Mrs. Larson's home and conducted an investigation.^[4] As a result of that investigation her husband, Kevin Larson, was arrested on charges of misdemeanor domestic assault^[5] and interference with a 911 call, which is a gross misdemeanor.^[6]

4. On June 14, 2001, Kevin Larson entered into a plea agreement in Sibley County District Court under which he pleaded guilty to the misdemeanor charge of domestic assault and the gross misdemeanor charge of interference with a 911 call was dismissed.^[7] On the same day, the Sibley County District Court then entered a Criminal Judgment against Mr. Larson convicting him of the charge of misdemeanor domestic assault. The Court sentenced Mr. Larson to jail for 90 days but stayed imposition of that sentence and placed him on probation for a period of one year.^[8]

5. Mrs. Larson's family child care program was due for relicensure in June 2002. In March 2002, the County began the relicensure process which consisted, among other things, of home visits, communications with parents of children under care, and background studies of Mrs. Larson and her husband, all of which are required by Minnesota law.^[9]

6. On March 5, 2002, Mr. Larson authorized the County to conduct a background study of him. That background study was completed on April 26, 2002, and

revealed his June 14, 2001, conviction of the charge of misdemeanor domestic assault.^[10] Between April 26 and May 1, 2002, the County performed an analysis to determine whether or not Mr. Larson might pose a risk of harm to persons served by his wife's child care program. It was the County's opinion that he posed an intermediate risk to such persons.^[11]

7. On May 1, 2002, the Department notified both Mr. Larson and his wife that Mr. Larson was disqualified from direct contact with persons served by programs licensed by the Department because of his prior conviction for domestic assault. The notice advised Mr. Larson of his right to request reconsideration of the disqualification by the Department.^[12]

8. On May 28, 2002, Mr. Larson requested the Department to reconsider his disqualification. In his request, Mr. Larson stated that the incident that led to his conviction was in reality an isolated, non-violent argument between spouses that was misinterpreted by the minor living in the home. He also indicated that he had successfully completed his probation, including a twenty-four-week anger management course. He expressed his belief that he did not pose a risk of harm to persons served by Mrs. Larson's child care program.^[13]

9. On June 10, 2002, Mr. Larson successfully completed all conditions of his probationary sentence, and the District Court discharged him from probation.^[14]

10. On June 28, 2002, the County forwarded Mr. Larson's request for reconsideration to the Department.^[15]

11. On September 25, 2002, the Department issued a letter to Mr. Larson denying his request for removal of his disqualification or, alternatively, for a variance from that disqualification. The denial was based on findings that information establishing that he had a disqualifying characteristic was correct and that he had failed to demonstrate that he did not pose a risk of harm to persons served by Mrs. Larson's child care program.^[16]

12. By an Order of Revocation also entered on September 25, 2002, the Department revoked Mrs. Larson's family child care license because her husband had a disqualification and was living in the day care residence.^[17]

13. Mrs. Larson subsequently made a timely appeal of the Department's Order of Revocation,^[18] and that appeal has resulted in this contested case proceeding.^[19]

14. Mr. Larson successfully completed a domestic violence program. In the opinion of the program coordinator, "he is a low risk to re-offend."^[20]

15. Mr. Larson's employer considers him to be an excellent employee.^[21]

16. The parents of children in Mrs. Larson's care consider her to be an excellent child care provider and an asset to the children in care.^[22]

17. No child in Mrs. Larson's care has suffered injury or harm as a result of her care, nor has she provided substandard care to a child in care.

18. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

19. The Memorandum that follows explains the reasons for these Findings of Fact, and to the extent that the Memorandum may contain additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

20. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner of Human Services authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.^[23]

2. The Department and the County gave proper and timely notice of the hearing, and it has also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. This is "a consolidated contested case hearing for sanctions based on . . . disqualifications" within the meaning of Minnesota Statutes, section 245A.08, subdivision 2a. The scope of this contested case proceeding therefore includes appeals from Mr. Larson's disqualification and from the Department's revocation of Mrs. Larson's family child care license.

4. Minnesota Statutes, section 245A.04, subdivision 3d(a)(4), provides that a person convicted of domestic assault^[24] must be disqualified from having access to a person receiving services from a license holder if the person so convicted is a person "age 13 or older living in the household where the licensed program will be provided."^[25]

5. The Department has the burden of establishing by a preponderance of the evidence that Kevin Larson has been convicted of domestic assault and is also a person age 13 or older living in the household where Mrs. Larson provides licensed child care services.^[26]

6. Kevin Larson has been convicted of domestic assault and is also a person age 13 or older living in the household where Mrs. Larson provides licensed child care

services. He is therefore disqualified from having access to persons receiving child care services from his wife.

7. Minnesota Statutes, section 245A.04, subdivision 3b (a) provides that “[t]he individual must present information showing that:

(1) the information the commissioner relied upon in determining that the underlying conduct giving rise to the disqualification occurred, and for maltreatment, that the maltreatment was serious or recurring, is incorrect; or

(2) the subject of the study does not pose a risk of harm to any person served by the applicant, license holder, or registrant under section [144A.71](#), subdivision 1.

An individual seeking reconsideration and removal of a disqualification therefore has the burden of establishing by a preponderance of the evidence that one or both of those conditions exist.

8. Minnesota Statutes, section 245A.04, subdivision 3b (b) provides that:

[t]he commissioner shall rescind the disqualification if the commissioner finds that the information relied on to disqualify the subject is incorrect. The commissioner may set aside the disqualification under this section if the commissioner finds that the individual does not pose a risk of harm to any person served by the applicant, license holder, or registrant under section [144A.71](#), subdivision 1.

9. Minnesota Statutes, section 245A.04, subdivision 3b (b) also provides that:

[I]n determining that an individual does not pose a risk of harm, the commissioner shall consider the nature, severity, and consequences of the event or events that lead to disqualification, whether there is more than one disqualifying event, the age and vulnerability of the victim at the time of the event, the harm suffered by the victim, the similarity between the victim and persons served by the program, the time elapsed without a repeat of the same or similar event, documentation of successful completion by the individual studied of training or rehabilitation pertinent to the event, and any other information relevant to reconsideration.

The statute goes on to provide that:

In reviewing a disqualification under this section, the commissioner shall give preeminent weight to the safety of each person to be served by the license holder, applicant, or registrant under section [144A.71](#), subdivision 1, over the interests of the license holder, applicant, or registrant under section [144A.71](#), subdivision 1.

The ALJ therefore concludes that the legislature intended that conflicts in the evidence regarding whether or not an individual poses a risk of harm to children under care should be resolved in a way that affords a greater margin of safety to those children.

10. Mr. Larson failed to establish by a preponderance of the evidence that the information the Commissioner relied upon in determining that the underlying conduct giving rise to the disqualification occurred was incorrect.^[27] Mr. Larson also failed to establish by a preponderance of the evidence that he does not pose a risk of harm to any person served by his wife's licensed family child care program. Since Mr. Larson failed to establish a basis for either mandatory or permissive removal of his disqualification by the Commissioner, his disqualification should not be rescinded or set aside.

11. Minnesota Rules, part 9502.0335, subpart 6, provides, in part, that:

[a]n applicant or provider shall not be issued a license or the license shall be revoked, not renewed, or suspended if the applicant, provider, or any other person living in the day care residence or present during the hours children are in care, or working with children . . . [h]as a disqualification under Minnesota Statutes, section 245A.04, subd. 3d.

12. Since a person having a disqualification lives in Mrs. Larson's day care residence, the Commissioner must revoke her family child care license.

13. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

14. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon the these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge therefore respectfully RECOMMENDS that the Commissioner:

(1) AFFIRM the Department's decision of September 25, 2002, to DENY reconsideration of the disqualification of Kevin Larson; and

(2) AFFIRM the Department's Order of Revocation dated September 25, 2002, and REVOKE the license of Jennifer Larson to provide family child care.

Dated this 10th day of January 2003.

S/ Bruce H. Johnson
BRUCE H. JOHNSON
Administrative Law Judge

Reported: Tape Recorded (two tapes); No Transcript Prepared.

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NOTICE

Under Minnesota law,^{[\[28\]](#)} the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The County presented some evidence of domestic discord in which Mr. Larson was involved from 1989 through 1991 during what appears to have been an earlier marriage.^[29] Since any such incidents were over ten years old, they cannot form the basis for disqualification.^[30] Nonetheless, the County argued that those older incidents demonstrated a pattern of domestic discord and were relevant in determining whether or not Mr. Larson now poses a risk of harm to children under Mrs. Larson's care. For her part, Mrs. Larson argued that what may have happened in Mr. Larson's previous marriage over ten years ago did not shed any meaningful light on his current relationship with her, which she testified was a sound and not an abusive relationship. Here, the role of the ALJ is to review the Department's determination that Mr. Larson now poses a risk of harm to children now under Mrs. Larson's care. In making that determination, the record indicates that the Department only relied on Mr. Larson's June 14, 2001, conviction of domestic assault and not on any domestic discord that may have occurred during his previous marriage.^[31] In reviewing the Department's finding that Mr. Larson does pose a risk of harm to children now under Mrs. Larson's care, the ALJ will not rely on evidence that the Department did not rely on. So, the real issue here is whether Mr. Larson has met his burden of demonstrating that the conduct involved in that domestic assault conviction is insufficient to establish that he does pose such a risk of harm.

When the Department was considering whether or not Mr. Larson did pose a risk of harm, it had two, somewhat conflicting accounts of what had happened at the Larson home on December 10, 2000—the police report^[32] and a written explanation of what had happened that Mr. Larson provided to the Department when he requested reconsideration of his disqualification.^[33] The police report indicated that a greater degree of verbal discord and physical contact had occurred than what Mr. Larson later described. In determining whether Mr. Larson posed a risk of harm, the Department necessarily placed more credence in the police report than in Mr. Larson's subsequent description of what had happened. That was a reasonable choice. The police report was prepared on the day the incident occurred while Mr. Larson's written version was prepared several months later. The police officers had no direct stake in the outcome while Mr. Larson clearly did. And the police version tended to be corroborated by Mr. Larson's subsequent guilty plea.

The evidence that the Respondent presented tended to establish that there was little, if any, likelihood that Mr. Larson would ever physically harm children under Mrs. Larson's care. The ALJ accepted that evidence at face value, since there was no evidence that Mr. Larson had ever physically harmed a child. But that does not mean that the kind of behavior that Mr. Larson engaged in on December 10, 2000, could not be harmful to children under Mrs. Larson's care. Witnessing domestic discord and abuse to a caregiver could well be injurious to day care children by impairing their senses of trust, safety, and well-being. So, the issue here is really whether or not there is a possibility that something like that could happen in the future. The County concluded that there is an "intermediate risk" of that.^[34] Mr. Larson did not testify and therefore did not establish any fundamental inaccuracies in the police report.^[35] Under

the law, the Larsons bore the burden at the hearing of establishing by a preponderance of the evidence that Mr. Larson “does not pose a risk of harm to any person served by ... license holder.”^[36] In this case, the ALJ concluded that the evidence that they were able to present fell short of meeting that burden.

B. H. J.

^[1] Minnesota Statutes, section 14.61 (2002). (Unless otherwise specified, citations to Minnesota Statutes refer to the 2002 edition.)

^[2] Testimony of Jennifer Larson; Exhibits E, F, and G.

^[3] Testimony of Rhonda Niebuhr; Exhibit 2.

^[4] Exhibit 4.

^[5] Minnesota Statutes, section 609.2242, subdivision 1.

^[6] Minnesota Statutes, section 609.78, subdivision 2.

^[7] Exhibit 2.

^[8] *Id.*

^[9] Minnesota Statutes, section 245A.04, subdivision 3(c)(2).

^[10] Exhibit 1; testimony of Rhonda Niebuhr.

^[11] Testimony of Rhonda Niebuhr; Exhibit 3.

^[12] Exhibits 6 and 7.

^[13] Exhibit 8.

^[14] Exhibit D.

^[15] Exhibits 9 and 10.

^[16] Exhibit 12.

^[17] Exhibit 11.

^[18] Exhibits 13, 14, and 15.

^[19] Exhibit 16.

^[20] Exhibit C.

^[21] Exhibit B.

^[22] Testimony of Claudia Sinnamon; Exhibits H, I, and J.

^[23] Minnesota Statutes, Sections 14.50, 14.57, 14.69, and 245A.01 through 245A.16.

^[24] Minnesota Statutes, section 609.2242,

^[25] Minnesota Statutes, section 245A.04, subdivision 3 (c) (2).

^[26] Minnesota Statutes, section 256.045, subdivision 3.

^[27] Mr. Larson did not dispute the fact that he had been convicted of misdemeanor domestic assault under Minnesota Statutes, section 609.2242, subdivision 1.

^[28] Minn. Stat. § 14.62, subd. 1.

^[29] Exhibit 5.

^[30] See Minnesota Statutes, section 245A.04, subdivision 3d(a)(4).

^[31] See Exhibit 12.

^[32] Exhibit 4.

^[33] Exhibit 8.

^[34] Exhibit 3; testimony of Rhonda Niebuhr.

^[35] Mrs. Larson did introduce a letter from Mr. Larson's counselor expressing an opinion "that he is a low risk to re-offend." (Exhibit C) But that did not completely negate the possibility of some risk.

^[36] Minnesota Statutes, section 245A.04, subdivision 3b (a).